(2) New Jersey must commit within 30 days of the publication of this notice to submit modeling results once acceptable test procedures and standards have been developed for one-mode ASM. This commitment must be fulfilled by a date certain but no later than 12 months after conditional interim approval.

Minor Deficiencies

(1) New Jersey must submit proof that adequate funding will be available throughout the life of the program.

(2) New Jersey must submit final requirements for inspection of fleet vehicles.

(3) New Jersey's quality control measures must be in accordance with the requirements set forth in 40 CFR 51.359.

(4) New Jersey must provide a detailed description of its motorist compliance enforcement program.

(5) New Jersey must provide a description of the procedures that will ensure program quality; such as audits, and training requirements.

(6) New Jersey must provide final program requirements for data collection.

(7) New Jersey must provide final procedures for analyzing and reporting program data.

(8) New Jersey must complete the public information program, including the repair station report card.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 18, 1996.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 96–27951 Filed 10–30–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MD037–3008, MD037–3009; FRL–5642–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Conditional Approval.

SUMMARY: EPA is proposing conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the counties of Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Queen Anne's, and Washington, and the City of Baltimore. The intended effect of this action is to propose conditional approval of the Maryland enhanced motor vehicle I/M program. EPA is proposing conditional approval because Maryland's SIP revision is deficient in

some manner with respect to requirements of the CAA and EPA's I/M program regulations. EPA regards the following deficiencies of the Maryland program as those most significantly affecting its operation: lack of legal authority, performance standard remodeling, and finalized program regulations. EPA expects that Maryland will work quickly to remedy these items. EPA also cites below other flaws of the program. While these areas are less significant to the program's immediate success, they still need to be corrected so as to achieve the program's full air quality potential. This action is taken under Section 110 of the 1990 Clean Air Act (the Act, or CAA).

DATES: Comments must be received on or before December 2, 1996.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environmental, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti @ 215–566–2174, at the EPA Region III address above, or via e-mail at magliocchetti.catherine@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III office.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxide (NO_X) emissions. An important control measure to reduce these emissions is the implementation of a motor vehicle inspection and maintenance (I/M) program. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create toxic contaminants, about half of the ozone air pollution and nearly all of the carbon monoxide air pollution in United States cities. Of all highway vehicles, passenger cars and light-duty trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although the U.S. has made progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles traveled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the technological progress in vehicle emission control over the same two decades. Projections indicate that the steady growth in vehicle travel will continue. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

Today's cars are absolutely dependent on properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly, and the average car on the road emits three to four times the new car standard. Major malfunctions in the emission control system can cause emissions to skyrocket. As a result, 10 to 30 percent of cars are causing the majority of the vehicle-related pollution problem. Unfortunately, it is rarely obvious which cars fall into this category, as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability.

Effective I/M programs, however, can identify these problem cars and assure their repair. I/M programs ensure that cars are properly maintained during customer use. I/M produces emission reduction results soon after the program is put in place.

The Clean Air Act as amended in 1990 (the Act) requires that most polluted cities adopt either ''basic'' or ''enhanced'' I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the ''basic'' I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 parts per million (ppm) design value [1] with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region.

''Basic'' and ''enhanced'' I/M programs both achieve their objectives by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An ''enhanced'' program covers more of the vehicles in operation, employs inspection methods that are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373), herein referred to as the November 1992 I/M Rule. Flexibility amendments to this rule, which provided for a low enhanced I/M performance standard were published on September 18, 1995 (60 FR 48029) and additional I/M flexibility amendments for qualified areas in the OTR were published on July 25, 1996 (61 FR 39031).

Under sections 182(c)(3), 187(a)(6) and 187(b)(1) of the Act, any area having a 1980 Bureau of Census-defined urbanized area population of 200,000 or more and that is either: (1) designated as serious or worse ozone nonattainment or (2) moderate or serious CO nonattainment areas with a design value greater than 12.7 ppm, shall implement enhanced I/M in the 1990 Census-defined urbanized area. The Act also established the ozone transport region (OTR) in the northeastern United States which includes the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and Northern Virginia and the District of Columbia. Sections 182(c)(3) and 184(b)(1)(A) of the Act require the implementation of enhanced I/M programs in all metropolitan statistical areas (MSAs) located in the OTR that have a population of 100,000 or more people.

The I/M regulation establishes minimum performance standards for basic and enhanced I/M programs as

[1] The air quality design value is estimated using EPA guidance. Generally, the fourth highest monitored value with 3 complete years of data is selected as the ozone design value because the standard allows one exceedance for each year. The highest of the second high monitored values with 2 complete years of data is selected as the carbon monoxide design value.

well as requirements for the following: Network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for enhanced I/M programs is based on a high-technology transient test, known as IM240, for new technology vehicles (i.e, those with closed-loop control and, especially, fuel injected engines), including a transient loaded exhaust short test incorporating hydrocarbons (HC), CO and NOx cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test.

Under the November 1992 I/M Rule enhanced I/M programs were required to initially begin phased-in implementation by January 1, 1995, with final full implementation slated for January 1, 1996. Due to recent EPA rule changes, and the flexibility afforded by the National Highway Systems Designation Act of 1995 (NHA), EPA believes, as explained below, that all states should be afforded extra time to begin full implementation of their enhanced I/M programs.

II. Background

The State of Maryland is part of the OTR and contains the following MSAs or parts thereof with populations of 100,000 or more: Baltimore; Washington, DC; Hagerstown; and the Philadelphia-Wilmington-Trenton Consolidated MSA. Sections 182(c)(3) and 184(b)(1)(A) of the Act require all states in the OTR region which contain MSAs or parts thereof with populations of 100,000 or more, to submit a SIP revision for an enhanced I/M program.

On July 11, 1995 the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision for an enhanced I/M program. This SIP revision included a copy of the final enhanced I/M regulations, the Maryland Transportation Article at Title 23, Subtitle 2 (herein referred to as Subtitle 2 of the Maryland Transportation Article); the Maryland I/M Request for Proposals (RFP); the Maryland I/M legislation, and supporting documents. On March 27, 1996, MDE submitted an amendment to this SIP revision, in response to changes to the federal program requirements resulting from new federal legislation governing enhanced I/M programs, and EPA rule changes to the program. Maryland originally had submitted fully adopted state regulations in the July 11, 1995 revision. Parts of the Maryland I/M regulations were reproposed by Maryland because of the flexibility afforded from the federal and state legislative changes, and Maryland's amendment to the SIP revision contains proposed regulatory changes to Maryland's program. As a condition of this rulemaking, Maryland will need to fully adopt and submit final regulations to EPA.

EPA's summary of the requirements of the federal I/M rule as found in 40 CFR 51.350 through 51.373, and EPA's analysis of Maryland's submittal are outlined below. A more detailed analysis of Maryland's submittal is contained in a Technical Support Document (TSD) dated September 3, 1996 which is available from the Region III office, listed in the ADDRESSES section. Parties desiring additional details on the federal I/M regulation are referred to the November 5, 1992 Federal Register document (57 FR 52950) or 40 CFR 51.350 through 51.373, as well as the I/M Flexibility Amendments in the September 18, 1995 Federal Register document (60 FR 48029) and the additional I/M flexibility amendments for qualified areas in the OTR, published on July 25, 1996 at (61 FR 39031).

III. EPA's Analysis of Maryland Enhanced I/M Program

As discussed above, sections 182(c)(3), 184(b)(1)(A), 187(a)(6) and 187(b)(1) of the Act require that States adopt and implement regulations for an enhanced I/M program in certain areas. Based upon EPA's review of Maryland's submittal, EPA believes Maryland has not complied with all aspects of the Act and the I/M rule. For certain sections of the I/M rule and/or of the Act, which are identified below and with which Maryland has not yet fully complied, EPA proposes to conditionally approve the SIP revision if EPA receives a commitment from Maryland to correct said deficiencies. Before EPA can continue with the rulemaking process, Maryland must make a commitment within 30 days of October 31, 1996 to correct these deficiencies by a date certain within 1 year of EPA's conditional approval. If Maryland does not make this commitment, EPA proposes in the alternative to disapprove the Maryland I/M SIP revision. In addition, Maryland must correct these deficiencies by the date specified in the commitment, or the conditional approval will convert to a disapproval under the Act section 110(k)(4).

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the Act and 40 CFR 51.350(a) require all states in the OTR which contain MSAs or parts thereof with populations of 100,000 or more to implement an enhanced I/M program. The State of Maryland is part of the OTR and contains the following MSAs or parts thereof with populations of 100,000 or more: Baltimore; Washington, DC; Hagerstown; and the Philadelphia-Wilmington-Trenton Consolidated MSA. The Baltimore; Washington, DC; and Philadelphia areas are also classified as serious or worse nonattainment areas and are also required to implement an enhanced I/M program as per section 182(c)(3) of the Act and 40 CFR 51.350(2).

Under the requirements of the Act, the following 14 jurisdictions in Maryland (which are located in the above listed MSAs) are subject to the enhanced I/M program requirements: Anne Arundel, Baltimore, Carroll, Calvert, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Queen Anne's, and Washington counties, and the City of Baltimore.

The Maryland I/M legislative authority (Subtitle 2 of the Maryland Transportation Article) provides the legal authority to establish the geographic boundaries of the program. The program boundaries listed in Appendix C of the SIP revision are the inclusive zipcode listings for all of the jurisdictions listed above, and meet the federal I/M requirements under § 51.350.

The federal I/M regulation requires that the state program shall not sunset until it is no longer necessary. EPA interprets the federal regulation as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement.

Maryland's legislative authority for this program states in section 23–208 that unless changed by Act of the legislature the program shall sunset on December 31, 2001, which is before Baltimore's severe nonattainment deadline of November 15, 2005. However, section 23–202 of the legislative authority apparently

supersedes section 23–208, stating that this program shall remain in effect for as long as required by federal law. EPA needs confirmation from the State Attorney General's Office that section 23–202 applies to Maryland's program, and whether section 23–202 constitutes an Act of the legislature extending the sunset date in section 23–208. Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to either provide such an opinion from the State Attorney General's Office that clearly says that Maryland's interpretation of the sunset date is no earlier than November 15, 2005; or in the absence of such an opinion, to commit to provide EPA with new legislative authority that allows for such an extended sunset date of the program. Maryland's commitment must provide for either, (a) the opinion, or (b) the authority, to be provided to EPA by a date certain within 1 year of the final conditional ruling. If Maryland fails to make the commitment, EPA proposes in the alternative to disapprove this SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Enhanced I/M Performance Standard—40 CFR 51.351

In accordance with the Act and with the I/M rule, the enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following modeling I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_X and HC. The Maryland submittal must meet the enhanced I/M performance standard for HC and NO_X in all subject I/M areas.

The Maryland submittal includes a modeling demonstration of the performance standard that uses the following program design parameters. EPA here notes that not all of Maryland's parameter assumptions are acceptable, and as a condition of this rulemaking Maryland must remodel its program and demonstrate compliance with the I/M performance standard:

Parameter	Maryland's program
Network type	Centralized, test-only.
Start date	1984 (existing program); 1989 and 1997 (new pressure and purge testing elements).
Test frequency	Biennial (i.e. every two years).
Model year/vehicle type coverage	1968 and newer model year (1968 +) light duty gasoline vehicles (LDGV); light duty gasoline trucks 1 & 2 (LDGT1, LDGT2); heavy duty gasoline vehicles up to 26,000 lbs gross vehicle weight (HDGV).
Exhaust emissions test type	IM240, transient test type for all model year vehicles in program.
Emission standards	0.8 gpm HC, 15 gpm CO, 2.0 gpm NO_X up until January 1, 1999; 0.6 gpm HC, 15 gpm CO and 1.5 gpm NO_X after December 31, 1998. [Also, transient standards can be found in the Maryland I/M regulations; June 10, 1994 edition of the *Maryland Bulletin*.]
Emission control device visual inspection	Pressure and purge check on all model year vehicles.
Evaporative system function checks	Pressure decay test ‰ 1968 + vehicles.
	Purge test ‰ 1984 + vehicles.
Stringency rate pre-1981 vehicle failure)	40%.
Waiver rate	3%.
Compliance rate	100%.
Evaluation dates	July 1999, July 2002, July 2005.

Since Maryland used inappropriate assumptions in modeling the program, Maryland's modeling demonstration was not performed correctly, and submittal of a proper modeling demonstration by Maryland is a condition for full approval of the SIP revision. Therefore, Maryland must remodel the program using valid assumptions and verify for EPA that the I/M program in Maryland meets or exceeds the model I/M program performance standard. This demonstration must prove that the Maryland program design will meet the minimum enhanced I/M performance standard, expressed in gpm, for HC, and NO_x, for the years *2002 and 2005* for all areas of Maryland covered by the program. These evaluation years represent a change from the originally required dates of 1999, 2002 and 2005. EPA believes that new modeling of the program should not include a 1999 evaluation year, due to changes in program implementation schedules as per the National Highway Systems Designations Act of 1995. Other program assumptions should be carefully verified by Maryland when this demostration is made to EPA. A more detailed discussion of the program design parameters can be found in the Technical Support Document (TSD), dated September 3, 1996, compiled by EPA in evaluating Maryland's program. Maryland should refer to the TSD for further instructions on remodeling of the program as designed.

Therefore, EPA proposes to conditionally approve the Maryland SIP based on receiving within 30 days of the publication of this document, Maryland's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, a modeling demonstration of the program using the appropriate assumptions and methodology (which are further discussed in more detail in the TSD). If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the

program, and to determine if the program is meeting the requirements of the Act and the federal I/M regulation. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program. In addition to these requirements, the state should also be prepared, in accordance with this section of the I/M rule, to provide in the biennial report, the results of undercover surveys of inspector effectiveness related to identifying vehicles in need of repair. Also, the state should be prepared in its biennial reports to provide local fleet emission factors in assessing the actual effectiveness of the I/M program.

The submittal includes an ongoing program evaluation that meets the federal I/M regulation requirements. EPA believes that Maryland has the authority to implement this portion of the program under its general authority for the program.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The July 1995 SIP revision documented sufficient funds, equipment and personnel have been appropriated to meet program operation requirements for 1995 and 1996. However, no update on the program's financial figures were provided with the SIP revision amendment made in March 1996. In the 1995 submittal, a test fee of $17 was set by Maryland and the contractor to cover the operation costs of the program, and approximately $6 from each fee which was to cover Maryland's administrative costs for quality control and assurance. Since the test fee was capped at $14 by a change in the program's enabling legislation, the quality control budget for this program appears to have been cut by one half. Therefore, as a condition of this rulemaking, Maryland should commit to providing updated budget information to EPA for the years 1997 and 1998, including a detailed explanation of the number of personnel dedicated to quality assurance, data analysis, program administration, and enforcement. Further, Maryland should give its budget allotment for the equipment resources that will be needed to run an effective quality assurance program, including facilities and computer costs required for data analysis, processing and reporting.

EPA understands that Maryland has made certain provisions to account for changes cited above in the program's budget structure and test fee, and EPA is merely requesting an update of the program's budgetary documentation in order to satisfy this condition.

Maryland's submittal has not provided the necessary documentation for this section to show that Maryland meets the adequate tools and resources requirements set forth in the federal I/M regulations and is therefore, not approvable.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to obtain and/or demonstrate to EPA that adequate funding and tools exist to execute the I/M program in accordance with this section of the I/M rule, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Maryland enhanced I/M regulation provides for a biennial test frequency. Maryland's Transportation Article and Maryland's I/M regulation provide the legal authority to implement and enforce the biennial test frequency. The Maryland I/M Request for Proposals (RFP), and the Maryland I/M contractors's bid response provide sufficient evidence that convenient services will be provided to the motorist.

The Maryland submittal meets the test frequency and convenience requirements of the federal I/M regulations and is approvable.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the State or local I/M area.

The federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The Maryland enhanced I/M program requires coverage of all 1977 and newer

LDGV, LDGT1 and LDGT2, and HDGV up to 26,000 pounds GVWR which are registered or required to be registered in the I/M program area. As of the date of the SIP submittal, 1.4 million vehicles per year (2.8 million biennially) will be subject to enhanced I/M testing. Maryland's regulation does not currently include vehicles operating on all fuel types but Maryland commits to adding the required testing of these vehicles once EPA promulgates regulations on alternative fueled vehicle I/M testing. Subtitle 2 of the Transportation Article and the Maryland I/M regulation provide the legal authority to implement and enforce the vehicle coverage.

Maryland's program provides for fleet self-testing for the first year of the program, using the same testing requirements and the same quality control standards as the contractor-run component. Maryland's plan for testing fleet vehicles is acceptable and meets the requirements of the federal I/M regulation. Maryland's regulation requires vehicles which are operated on Federal installations located within an I/M program area to be tested, regardless of whether the vehicles are registered in the State or local I/M area, and is approvable.

Maryland's regulation provides for special exemptions for fire, rescue, and ambulance equipment owned or leased by State or local governments, and for rescue squad, voluntary fire department or ambulance company vehicles registered as emergency vehicles. Also exempted are motorcycles, gasoline trucks greater than 26,000 lbs, Class E and F trucks and tractors, Class H school vehicles, Class L historic vehicles, Class N street rods, Class P passenger buses, diesel and electric vehicles, all model year 1976 and older model years, and military tactical vehicles. These exemptions are acceptable under this section of the I/M requirements.

The SIP revision does not include a full description of the State's plan for how subject vehicles will be identified. Also, Maryland does not describe the mechanism for identification of vehicles that are routinely operated in the program area but that may not be registered in the area. The SIP does not provide an estimate of the number of unregistered vehicles operating in the program area. Maryland should ensure that all elements of this section of the I/M rule are addressed for SIP purposes, and for the purpose of implementing an effective program.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to provide an explanation of how all subject vehicles in the program will be identified, and cure all of the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–EPSD–IM–93–1, dated April 1994. The federal I/M regulation also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be tested in the same manner as other subject vehicles.

Maryland regulations and Section VII of the RFP provide written test procedures for transient emission and evaporative system purge and pressure testing in accordance with the requirements of the I/M rule. However, proposed changes to Maryland regulations will prohibit the invasive testing procedures previously recommended by EPA and originally adopted by Maryland. The proposed non-invasive gas-cap only check does not have written procedures given in the SIP revision amendment. EPA notes that Maryland was unable to provide written procedures for this element in the March submittal since this test is different from the pressure test originally slated for Maryland's program. EPA also understands that Maryland did not have gas-cap test procedures avaiable at the time of the March 1996 submittal, as a result of legislative changes at Maryland and federal level. However, Maryland should now be able to quickly encorporate testing procedures for this element into its program, and provide these specifications as part of its SIP revision to EPA. EPA cautions Maryland however, that this type of pressure check does not achieve the emission reduction credit of that in EPA's pressure test regulations. Maryland anticipates non-invasive purge and pressure procedures will be developed in the future, and commits to adopting non-invasive purge procedures when they become available.

The Maryland regulation provides for two sets of permanent emission standards for the transient test, one set which applies from 1997 through 1998; and a second set of more stringent standards that will apply in calendar year 1999 and later. The schedule for implementation of the permanent standards is approvable and should be used in the performance standard modeling demonstration.

Maryland regulations do not meet the requirements of the I/M rule on several counts. Maryland must include by regulation, a provision to prohibit against prior repair or adjustment to vehicles at the testing facilities at the time the inspection is being performed. Maryland should also include as part of its SIP revision, all applicable state regulations that address testing of vehicles with switched engines and regulations that address vehicles with no certified engine configuration.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to amend Maryland's regulation to prohibit repair or adjustment at testing facilities and cure all of the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter. Under this commitment, Maryland must adopt pressure test procedures beyond the gas-cap check if Maryland is to take credit for pressure testing in its modeling demonstration of the performance standard.

EPA proposes to conditionally approve the Maryland SIP based on Maryland's commitment to amend its regulations at the time when non-invasive procedures become available from EPA. Maryland need not submit a commitment to adopt purge procedures, since one is already contained in the SIP revision amendment.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment,

the required features, and written acceptance testing criteria and procedures.

Maryland's submittal contains the written technical specifications for all emission test equipment to be used in the program. The specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the federal I/M regulations and are approvable. EPA believes that Maryland has adequately addressed the requirement to update emission test equipment, in order to accommodate new technology vehicles and changes to the program, through the annual reporting requirement found in Maryland's SIP revision.

Maryland's program is deficient with respect to the gas-cap check referenced in COMAR 11.14.08.12, which does not have written specifications as required by the I/M rule, and therefore must be made a condition of this rulemaking. EPA again notes that Maryland was unable to provide specifications for this element in the March submittal since this test is different from the pressure test originally slated for Maryland's program. EPA also understands that Maryland did not have gas-cap test specifications available at the time of the March 1996 submittal, as a result of legislative changes at the state and federal level. However, Maryland should now be able to quickly incorporate testing specifications for this element into its program, and provide these specifications as part of its SIP revision to EPA.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to incorporate written gas-cap check testing procedures into Maryland's regulations, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Maryland's submittal contains the State's regulations, the RFP and the contractor's bid response, which together describe and establish quality control measures for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. Maryland believes, and EPA agrees that the unique identification number given on each vehicle inspection report (VIR) is an adequate measure that Maryland uses to maintain counterfeit resistant compliance documents. Further, the VIRs issued to each lane inspector are accounted for on a numbered basis, and lane inspectors are responsible for the number of compliance documents issued while on duty.

Maryland's SIP revision meets all of this section's requirements, and is approvable with respect to those r.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Subtitle 2 of Maryland's Transportation Article, and the Maryland I/M regulation provide the necessary authority to issue waivers, set and adjust cost limits, administer and enforce the waiver system, and set a $450 cost limit and allow for an annual adjustment of the cost limit to reflect the change in the CPI as compared to the CPI in 1989. The Maryland regulation, the RFP, and the contractor's bid response include provisions that address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration. These provisions meet the federal I/M regulations requirements and are approvable. In cases of economic hardship, time extensions are allowed under the program, but the length of the extension may not exceed one test cycle. Maryland has set a maximum waiver rate of 3% for both pre-1981 and 1981 and later vehicles and has Stated that corrective action will be taken if the waiver rate exceeds 3%. Maryland should use this waiver rate in the performance standard modeling demonstration.

The Maryland SIP revision does not specify the criteria that it will use to determine economic hardship, and it is unclear to EPA if Maryland intends to grant full waivers from compliance with the program as a result of economic hardship, or if Maryland only intends to issue time extensions for the purpose of compliance with the program. Therefore, as a condition of approval, Maryland should provide further documentation for this area, and fully explain the criteria that Maryland will use to issue these exemptions or extensions.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to fully document this aspect of the program and establish, if necessary, criteria for granting hardship exemptions by regulation or procedures manual and cure all of the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

Title 23, Subtitle 2, of the Maryland Transportation Article and the Maryland I/M regulation provide the legal authority to implement a registration denial system. Maryland's program will use a registration suspension mechanism, followed by registration denial if the vehicle is not in compliance with the inspection requirement on the subsequent registration renewal period.

As a condition of this approval, Maryland needs to provide EPA with a description of the compliance enforcement program for those vehicles routinely operated in, but not necessarily registered in the program area. The Maryland SIP revision does state that MVA routinely identifies such vehicles, but more information is needed as to how this targeting and enforcement takes place in Maryland. Maryland needs to track and limit the use of out-of-state exemptions as well. An explanation as to the handling of out-of-state vehicles should be provided to EPA as a condition of this rulemaking. Further, Maryland needs to describe the mechanism for encouraging the enforcement of vehicle transfer requirements when vehicle owners move into the I/M area. For the purposes of remodeling the program's demonstration of meeting the I/M performance standard, Maryland will need to either use the default value of 96% for the compliance rate (as documented in the July 1995 SIP revision submitted to EPA), or provide further documentation to EPA that proves Maryland's subsequent claim of 100% compliance is more appropriate for modeling purposes. Maryland's modeling demonstration should include an assessment of noncompliance due to loopholes, counterfeiting and unregistered vehicles in the area, as well as the number of vehicles operating in the area without valid registrations. Maryland should include estimates of compliance losses and the impact of fixes to the compliance enforcement program based upon a detailed analysis of actual program data. Maryland must also commit to a minimum enforcement level to be used in modeling and maintained in operation of the program. Maryland needs to supply EPA with documentation that motorists are routinely cited for noncompliance with the registration requirement of Maryland's law.

Under Maryland's regulation, those motorists who choose not to comply with the inspection requirement will have their vehicle registrations suspended. The I/M rule requires that penalties for noncompliance with the program be mandatory and meaningful. Noncompliance with the Maryland program subjects a motorist to up to $500 in penalties. While EPA does consider this penalty meaningful when compared to the minimum waiver expenditure of $450 in 1998, Maryland should adjust the penalty for noncompliance to a higher rate in later years, when the waiver limit is adjusted to include the CPI increase. In this way, noncompliance with the program will continue to be at least as costly as compliance with the program. Further, EPA understands that in lieu of a court appearance for a registration suspension, a motorist may plead guilty and pay $250 plus court costs, and accept a misdemeanor conviction under State law. EPA needs clarification from Maryland as to whether a motorist's vehicle is impounded when a motorist is cited for driving with a suspended registration. Maryland should clarify if this is the case, and if so, EPA considers the $250 fine coupled with seizure of the vehicle as an adequate and meaningful measure for the purposes of this section.

Also per the I/M rule, Maryland is required to have an external, readily visible means of determining a vehicle's compliance with the registration requirement. While Maryland does not provide such information in its SIP revision, EPA recognizes that such an element is present in Maryland's registration process. EPA expects that Maryland will continue the practice of issuing month/year stickers to affix to a vehicle's license plate for the purpose of externally identifying complying vehicles. Maryland will need to keep this practice instituted for as long as the I/M program is operational in order for this program to remain approvable. Should Maryland discontinue or change this practice, Maryland will need to notify EPA as to the replacement enforcement mechanism that will be used for this requirement, or EPA may find that Maryland has failed to implement the program.

Maryland also needs to supply EPA with proof that all types of fraud are prevented at the time of vehicle registration, especially through manipulation of registration or titling requirements. All exemption-triggering elements to a vehicle's registration should be confirmed through physical examination of the vehicle. Maryland does require valid documentation to prove address changes into or out of the I/M program areas, however, there is no evidence in the SIP revision that Maryland visually verifies exemption-triggering registration status for vehicles. This is an important facit of the program implementation, and Maryland will need to submit a commitment to correct this provision for the purposes of compliance with this section.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to demonstrate that an acceptable enforcement compliance program exists in accordance with this section of the I/M rule and cure all of the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The Maryland SIP does not describe how the enforcement program oversight is quality controlled and quality assured. The SIP revision does not include the procedures document that will detail the specifics of the implementation of the oversight program. Maryland should include a description of the program's information management activities, as well as the written procedures for the activities of enforcement personnel involved in monitoring the program, and the procedures used for auditing the enforcement personnel. The penalties associated with testing stations' missing program documents should also be included in Maryland's quality assurance program, and should reflect the ''street value'' of such items (i.e. test fee plus the minimum waiver expenditure).

Maryland needs to specify how and when periodic auditing and analysis of the testing database will occur. Comparison of the testing and enforcement database needs to be done to determine program effectiveness and to trigger additional enforcement activities if irregularities are found in the system. Compliance of the in-use fleet should be assessed through parking lot surveys and road-side pullovers.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to demonstrate that an acceptable enforcement compliance oversight program exists in accordance with this section of the I/M rule and cure all of

the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all State I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The Maryland submittal commits to establishing separate procedures for conducting overt and covert audits. These audits results should be recorded and retained in station and inspector files. As a condition of this rulemaking, Maryland should provide EPA with this documentation. Performance audits of inspectors will consist of both covert and overt audits. Maryland does not specify in the SIP revision the minimum number of covert vehicles that will be employed to conduct covert auditing.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to establish acceptable auditing procedures in accordance with this section of the I/M rule and cure all of the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

Maryland does not provide a penalty schedule for enforcement against Maryland's contractor, stations and inspectors. The program does not give descriptions of the administrative and judicial procedures and responsibilities relevant to the enforcement process. There is no listing of the responsible agencies, courts, and jurisdictions involved in the enforcement procedures, nor are the prosecuting and adjudicating parties identified. No funding allocations are described in the SIP revision for this section. Maryland should ensure that penalties against the contractor and individual inspectors conform with § 51.364 of the I/M rule. These penalties should include suspensions, retainage of pay, and retraining of inspectors who exhibit improper conduct. The oversight agency should have the authority to impose penalties against the contractor, even if the contractor had no direct knowledge of the inspector's violation.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to provide for an acceptable penalty schedule in accordance with this section of the I/M rule and cure all of the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR § 51.359. Maryland's regulation and RFP require the collection of data on each individual test conducted and describe the type of data to be collected. The type of test data collected meets the federal I/M regulation requirements and is approvable.

The submittal also commits to gather and report the results of the quality control checks required under 40 CFR 51.359 and is approvable.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The Maryland I/M SIP provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be analyzed and reported on meets the federal I/M regulation requirements and is approvable. Maryland commits to submit annual reports on these programs to EPA by July of the subsequent year. A commitment to submit a biennial report to EPA which addresses reporting requirements set forth in 40 CFR 51.366(e) is also included in the SIP.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

The Maryland I/M regulation requires all inspectors to receive formal training, and be certified by the MVA. Maryland's I/M regulation, the RFP and the contractors' proposal include a description of and the information covered in the training program, a description of the required written and hands-on tests and a description of the

certification process. However, recertification of inspectors is not required by Maryland regulation. As a condition of this rulemaking, Maryland must ensure that inspectors are required to be recertified at least every two years.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to ensure by State regulation that recertification of inspectors is required at least every 2 years and cure all of the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs.

Maryland must provide for the protection of whistle blowers and needs to document how it intends to follow up on complaints by the public or others involved in the program.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to provide for the protection of whistle blowers in the program and to provide a plan for how public complaints are handled by the State of Maryland, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the federal regulation and a description of the repair technician training resources available in the community.

The Maryland SIP revision requires the implementation of a technical assistance program which includes a hot line service to assist repair technicians and a method of regularly informing the repair facilities of changes in the program, training courses, and common repair problems. A repair facility performance monitoring program is also included in Maryland's I/M regulation, the RFP, and the I/M contractors' proposal which includes providing the motorist whose vehicle fails the test a summary of local repair facilities performances, provides regular feedback to each facility on their repair performance and requires the submittal of a completed repair form at the time of retest. The performance monitoring program design meets the criteria described in the federal regulation and is approvable. Maryland's regulation provides for the establishment and implementation of a repair technician training program which, at a minimum, covers the four types of training described in 40 CFR 51.369 of the federal regulation.

The repair effectiveness program described in the SIP meets the federal regulation and is approvable.

Compliance With Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in a emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

Under Maryland's regulation, owners are required to comply with emission related recalls before completing the emission test and renewing the vehicle registration. The SIP includes procedures to be used to incorporate national database recall information into Maryland's inspection database and quality control methods to insure recall repairs are properly documented and tracked. The submittal includes a commitment to submit an annual report to EPA which includes the recall related information as required in 40 CFR 51.370(c).

Maryland has complied with all elements of this section, and it is approvable.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

Legal authority to implement the on-road testing program and enforce off-cycle inspection and repair requirements is contained in Title 23, Subtitle 2, of the Maryland Transportation Article and Maryland's I/M regulation. The SIP submittal requires the use of RSD to test 20,000 vehicles per year in the I/M program area and will be implemented by the contractor. A description of the program which includes test limits and criteria, resource allocations, and methods of collecting, analyzing and reporting the results of the testing are detailed in the submittal. The on-road testing program described in the SIP meets federal requirements and is approvable.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372 through 52.373

The Maryland submittal included the State's final I/M regulations, legislative authority to implement the program, a final RFP, portions of the contractor's proposal, the signed contract between the State and the contractor, and a detailed discussion on each of the required program design elements. The start date for implementation of full-stringency cutpoints will be June 1, 1997. These cutpoints will be further tightened by the State in calendar year 1999 and beyond. Onboard diagnostic (OBD) checks will be required for 1994 vehicle model years and later, which are equipped with OBD equipment.

While Maryland did not resubmit I/M program design changes under the National Highway System Designation Act of 1995 (NHSDA), some elements of that legislation do affect the manner in which EPA is ruling on Maryland's SIP revision. The NHSDA directed EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. The NHSDA also directs EPA and the states to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be on or before

November 15, 1997, so that at least 6 months of operational program data can be collected to evaluate the interim program. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, that Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, ''start-up'' is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas.

EPA believes that for equity reasons even states that ultimately decided not to take advantage of the NHSDA should be able to start their programs in the same time frame. Because of the recent enactment of the NHSDA, many states, including Maryland, delayed implementation of their programs while analyzing the provisions of the NHSDA and determining whether or not to take advantage of its provisions. EPA believes that states such as Maryland that ultimately decided not to make a submission under the NHSDA should not be penalized in relation to states that did make such a submission with respect to start date requirements. These states should also start their programs as soon as currently possible in light of the delays occasioned by the NHSDA. Maryland has indicated that it intends to start its program by June 1, 1997. Therefore, as with submissions under the NHSDA, EPA proposes that if Maryland fails to start its program as soon as possible, or by November 15, 1997 at the latest, the proposed approval will convert to a disapproval at that time after a finding letter is sent to Maryland.

Maryland has not adequately completed a modeling demonstration showing that the program design meets the performance standard, and Maryland must provide evidence of adequate funding and resources to implement the program in the years 1997 and 1998. As explained above in previous sections of this discussion, as a condition of this rulemaking, Maryland will need to sufficiently meet the requirements of the I/M rule for these two areas. As a further condition, Maryland will need to fully adopt and submit to EPA, final regulations for the program.

Therefore, EPA proposes to conditionally approve the Maryland SIP based upon a commitment from Maryland within 30 days, to adopt and submit final regulations to EPA and cure all of the deficiencies related to this section of the I/M rule as explained above, by a date certain within 1 year. If Maryland fails to make the commitment EPA proposes in the alternative to disapprove the SIP. If Maryland fails to meet the condition by the date specified, EPA proposes to convert this rulemaking to a disapproval at that time by letter.

EPA's review of the material indicates that with the conditions described above, Maryland has adopted an enhanced I/M program in accordance with the requirements of the Act. EPA is proposing to conditionally approve the Maryland SIP revision and the addendum to the revision for an enhanced I/M program, which were submitted on July 11, 1995 and March 27, 1996, respectively, subject to the conditions described above. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing to conditionally approve this revision to the Maryland SIP for an enhanced I/M program based on certain contingencies. The conditions for approvability of this SIP revision are explained in detail under each applicable section of the I/M rule discussion found above.

EPA proposes to conditionally approve this SIP if Maryland commits within 30 days of this proposal to correct the deficiencies identified in this document by a date certain within 1 year of the final conditional ruling. If Maryland corrects the deficiencies by that date, and submits a new SIP revision, EPA will conduct rulemaking to fully approve the revision. Each of the conditions must be fulfilled by Maryland and submitted to EPA as an amendment to Maryland's I/M SIP revision. If such commitment is not made with 30 days, EPA proposes in the alternative to disapprove the SIP revision. If Maryland does make a timely commitment, but the conditions are not met by the specified date within 1 year, EPA proposes that this rulemaking will convert to a final disapproval. EPA will notify Maryland by letter that the conditions have not been met and that the conditional approval has converted to a disapproval. Furthermore, EPA proposes that Maryland's program must start no later than November 15, 1997. EPA also proposes that if Maryland fails to start its program as defined in this document and on this schedule, the conditional approval will convert to a disapproval after a finding letter is sent to Maryland.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that Maryland is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on Maryland's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of Maryland's submittal would not affect its state-enforceability. Moreover, EPA's disapproval of the submittal would not impose a new Federal requirement. Therefore, EPA certifies that should this approval convert to a disapproval, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing requirements nor would it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to the State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with

statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the Maryland enhanced I/M SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

If Maryland fails to meet any of the conditions of this approval action, the EPA Regional Administrator would directly make a finding, by letter, that the conditional approval had converted to a disapproval and the clock for imposition of sanctions under section 179(a) of the Act would start as of the date of the letter. Subsequently, a document would be published in the Federal Register announcing that the SIP revision has been disapproved.

The Administrator's decision to approve or disapprove the Maryland I/M SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q

Dated: October 16, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–27882 Filed 10–30–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5642–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent for partial deletion of the Geneva Industries Superfund Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the first seven components (Source Control Portion of the Site) of the eight remedial action components of the Record of Decision (ROD) for the Geneva Industries Superfund Site (Site) from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (Nov. 1, 1995).

EPA bases its proposal to delete the Source Control Portion of the Site on the determination by EPA and the State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC), that all appropriate Hazardous Substance Superfund (Fund) financed response under CERCLA for the Source Control Portion of the Site has been implemented to protect public health and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains to the Source Control Portion of the Site only and does not include the eighth ROD remedial action component (Ground Water Portion of the Site), which will remain on the NPL with remedial activities continuing for the ground water system operation.

DATES: Comments concerning this proposed partial deletion may be submitted on or before December 2, 1996.

ADDRESSES: Comments may be mailed to Mr. Donn R. Walters, Community Relations Coordinator (6SF–P), U.S. EPA Region 6, Suite 1200, 1445 Ross Avenue, Dallas, Texas 75202–2733, (800) 533–3508 or (214) 665–6483.

Comprehensive information concerning the Site, as well as information specific to this proposed partial deletion, is available through the EPA Region 6 public docket at EPA's Region 6 office in Dallas, Texas. The Administrative Record for the Site and the Deletion Docket for this proposed partial deletion are maintained at the Site information repositories listed below. Public docket items and Site information repository items are available for public inspection and copying. The relevant locations are as follows:

U.S. EPA Region 6, Library (6MD–II), Suite 1200, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427, hours of operation: 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

Texas Natural Resource Conservation Commission, Technical Park Center, Room 190, Building D, 12118 North IH 35, Austin, Texas 78753, (512) 239–2920, hours of operation: 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays.

Central Houston Public Library, Texas and Local History Division, Julia Ideson Building, 500 McKinney, Houston, Texas 77002, (713) 236–1313 (Main Library), (713) 247–1664 (Texas and Local History Division), hours of operation: 9:00 a.m. to 6:00 p.m. Monday through Saturday, excluding holidays. (Note that Texas and Local History Division hours are different from Main Library hours.)

FOR FURTHER INFORMATION CONTACT: Mr. Ernest R. Franke, Project Manager (6SF–AT), U.S. EPA Region 6, Suite 1200, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the first seven components (Source Control Portion of the Site) of the eight remedial action components of the Record of Decision (ROD) for the